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11
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13
14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 NIKE, INC.)

17 Plaintiff,)

18 vs.)

19 FUJIAN BESTWINN (CHINA) INDUSTRY)
CO., LTD.)

20 a/k/a)

21 XIAMEN BESTWINN IMP. & EXP. CO., LTD.)

22 Defendant.)
23)
24)
25)

Case No. 2:16-cv-00311-APG-VCF

PRELIMINARY INJUNCTION
ORDER

26 On February 17, 2016, Plaintiff NIKE, Inc. moved *ex parte* for a Temporary Restraining
27 Order, Seizure Order, and an Order for Preliminary Injunction, pursuant to Rule 65 of the
28 Federal Rules of Civil Procedure, the Patent Act, 35 U.S.C. § 283, and Local Rule 7-5. (Dkt.

1 Nos. 4, 8.) NIKE alleged that Defendant Fujian Bestwinn (China) Industry Co., Ltd. a/k/a
2 Xiamen Bestwinn Imp. & Exp. Co., Ltd. ("Bestwinn") has made, imported into the United
3 States, sold, offered to sell, distributed, promoted, and/or advertised at the WSA@Magic
4 ("WSA") trade show in Las Vegas, Nevada, numerous shoes that infringe U.S. Patent Nos.
5 D636,573, D666,406, D682,523, D683,119, D694,501, D696,853, D700,423, D707,032, and
6 D746,037 (because the infringements that are the subject of this preliminary injunction generally
7 relate to NIKE's Flyknit footwear designs, the relevant patents are referred to hereafter as the
8 "Flyknit Design Patents").

9 On February 17, 2016, the Court granted NIKE's Motion for Entry of a Temporary
10 Restraining Order and Seizure Order. (Dkt. No. 9.) Thereafter, NIKE filed a security deposit
11 with the Court, hand-served the Complaint, motion papers, and the Court's Order on Bestwinn at
12 its booth at the WSA show, and seized evidence of infringements from Bestwinn's booth at the
13 WSA show. (Dkt. Nos. 11, 12, 13, 17.) The seized evidence includes, among other things, a
14 laptop, an iPhone, a spiral notebook in which Bestwinn documented its offers to sell infringing
15 shoes at the WSA show, and shoes. (Dkt. Nos. 12, 17.) The seized shoes were only a portion of
16 Bestwinn's inventory and Bestwinn retained for promotion and sales a wide variety of shoe
17 designs not subject to the Temporary Restraining Order and Seizure Order. (Dkt. No. 17.)

18 NIKE also served courtesy copies of the Complaint, motion papers, and the Court's
19 Order on Bestwinn by electronic mail. (Dkt. No. 17.) Bestwinn acknowledged receipt of the
20 service email from NIKE, and Bestwinn represented in a first responsive email that going
21 forward it "will not sell or development any styles which may involve the NIKE patent." (*Id.*)
22 Shortly thereafter, Bestwinn sent NIKE a second responsive email in which Bestwinn (i)
23 apologized for not responding to NIKE's pre-suit notice letters; (ii) represented that it wants to
24 settle this case with NIKE; (iii) agreed it will not import its accused products into the United
25 States, and (iv) agreed to entry of an injunction with respect to its accused products. (*Id.*) NIKE
26 sent Bestwinn a proposed Stipulated Preliminary Injunction Order. (*Id.*) Bestwinn has not yet
27 substantively responded to NIKE's proposed stipulated order. (*Id.*)
28

1 The Court directed Bestwinn to file and serve an opposition to NIKE's motion for a
2 preliminary injunction by February 25, 2016, and to appear for a preliminary injunction hearing
3 on February 29, 2016. (Dkt. No. 9.) Bestwinn failed to serve an opposition.

4 The Court, having duly considered NIKE's arguments, as well as NIKE's Complaint,
5 Emergency Motion for *Ex Parte* Temporary Restraining Order, Seizure Order, and Preliminary
6 Injunction, and the declaration and exhibits submitted therewith, hereby makes the following
7 findings and conclusions:

8 1. NIKE is likely to succeed on the merits of its patent infringement claims. NIKE
9 is likely to succeed in showing that the Flyknit Design Patents are owned by NIKE, are valid,
10 and are enforceable, and that Bestwinn has imported into the United States, sold, offered to sell,
11 distributed, promoted, and/or advertised shoes bearing designs that infringe the Flyknit Design
12 Patents (the "Bestwinn Flyknit Design Infringements").

13 2. Bestwinn has not regularly or consistently identified its Flyknit Design
14 Infringements with distinguishing model numbers. Nevertheless, at WSA, Bestwinn used at
15 least the following model numbers for its Flyknit Design Infringements: 14149, 14260, 14309,
16 BW7100, BW14001, BW71448, L-50255, L-50361, and LD-P287/41.

17 3. Bestwinn is a China-based manufacturer of footwear products that, with the
18 exception of its temporary presence in Las Vegas during the biannual WSA show, does not have
19 a regular place of business or assets in the United States. Further, over the past two and one half
20 years, Bestwinn has established a pattern of importing into the U.S., selling, and/or offering to
21 sell infringing shoe designs at the WSA show, ignoring NIKE's cease and desist letters, and then
22 promptly leaving the United States.

23 4. Absent a preliminary injunction pending trial on the merits, Bestwinn's
24 manufacture, use, sales, offers to sell, and/or importation into the United States of Bestwinn
25 Flyknit Design Infringements is likely to result in immediate and irreparable injury to NIKE in
26 the form of loss of control over its valuable intellectual property rights, loss of consumer
27 goodwill, and interference with NIKE's ability to exploit the Flyknit Design Patents. *See, e.g.,*
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1 *NIKE, Inc. v. QiLoo Int'l Ltd.*, No. 2:12-CV-00191-GMN, Dkt No. 29 (D. Nev. Mar. 22, 2012);
2 *NIKE, Inc. v. Meitac Int'l*, No. 2:06-CV-00934-PMP-PA, 2006 WL 3883278 (D. Nev. Oct. 11,
3 2006). In addition, because Bestwinn has no presence in the United States, NIKE is likely to
4 suffer irreparable harm because it may be difficult or impossible for it to recover a money
5 judgment against Bestwinn. *Id.*

6 5. The harm to NIKE in denying a preliminary injunction outweighs the harm to the
7 legitimate interests of Bestwinn from granting such relief. Here, Bestwinn's pattern of entering
8 the United States for purposes of selling its Flyknit Design Infringements for a period of just a
9 few days once every six months has hamstrung NIKE's ability to effectively enforce its patent
10 rights. *QiLoo*, No. 2:12-CV-00191-GMN, at Dkt No. 29; *Meitac*, 2006 WL 3883278, *3 (if
11 defendant is not enjoined, "Nike will be severely handicapped in its ability to prevent further
12 importation of infringing products, thereby destroying any potential of preserving the status quo
13 pending a resolution of this case on its merits."). On the other hand, Bestwinn has many non-
14 infringing footwear designs it could sell instead of the Flyknit Design Infringements. *Id.* In
15 view of the foregoing facts, Bestwinn took a calculated risk by returning to the United States to
16 continue selling its Flyknit Design Infringements and the balance of harms tips in NIKE's favor.

17 6. The public interest weighs in favor of granting NIKE a preliminary injunction
18 because this relief will promote an intellectual property system where rights can be effectively
19 enforced and will protect the public from consumer confusion. *QiLoo*, No. 2:12-CV-00191-
20 GMN, at Dkt. No. 29; *Meitac*, 2006 WL 3883278, *3. Any other result – particularly in view of
21 Bestwinn's failure to oppose this motion – would undermine the public's interest in NIKE's
22 continued incentives to create and invest in the manufacture of ornamental footwear designs.

23 7. In view of the \$25,000 security deposit posted by NIKE, the Court finds that no
24 additional security is required.

25 **PRELIMINARY INJUNCTION**

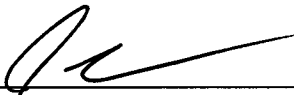
26 **IT IS THEREFORE ORDERED** that Bestwinn and its officers, agents, servants,
27 employees, and attorneys; and all other persons acting in active concert or participation with any
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1 of them, are hereby preliminarily enjoined from making, using, selling, offering to sell, and/or
2 importing into the United States any and all products bearing the designs, and colorable
3 imitations thereof, shown in NIKE's United States Design Patent Nos. D636,573, D666,406,
4 D682,523, D683,119, D694,501, D696,853, D700,423, D707,032, and D746,037.

5 Illustrative examples of Bestwinn's infringing shoes bear model numbers 14149, 14260,
6 14309, BW7100, BW14001, BW71448, L-50255, L-50361, and LD-P287/41, and are shown in
7 Appendix 1 to this Order. The scope of this injunction applies to all products bearing the designs
8 of the design patents above, including colorable imitations thereof, regardless of any model
9 number associated with the product, or any variations in color, materials, or construction
10 methods.

11 NIKE shall forthwith serve this Order upon Bestwinn by international courier to its
12 business addresses in China and by email to kevin@bestwinn.com, email@bestwinn.com, and
13 sales@bestwinn.com. Bestwinn is hereby given further notice that it shall be deemed to have
14 actual notice of the issuance and terms of this preliminary injunction and that any act by it in
15 violation of any of the terms hereof may be considered and prosecuted as contempt of this Court.

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19 SIGNED AND ENTERED this 29th day of February, 2016 at 8:05 PM

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23 United States District Judge
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